

OVERSIGHT OF THE MANAGEMENT OF THE FEDERAL ENVIRONMENTAL
PROTECTION, CHEMICAL SAFETY AND FISH AND WILDLIFE AGENCIES

TUESDAY, APRIL 14, 2015

U.S. SENATE

Committee on Environment and Public Works

Subcommittee on Superfund, Waste Management, and Regulatory
Oversight

Washington, D.C.

The committee met, pursuant to notice, at 9:32 a.m. in room 406, Dirksen Senate Building, the Honorable Mike Rounds [chairman of the subcommittee] presiding.

Present: Senators Rounds, Inhofe, Crapo and Markey.

STATEMENT OF THE HONORABLE MIKE ROUNDS, A UNITED STATES SENATOR
FROM THE STATE OF SOUTH DAKOTA

Senator Rounds. Good morning.

I am very happy to be chairing the first Superfund, Waste Management, and Regulatory Oversight Subcommittee hearing.

Ladies and gentlemen, we will begin this on time and we are going to try to be done in about 20 minutes after the hour in deference to Secretary Kerry. We will try to get through as much of today's testimony as possible. We will ask the members to submit any additional questions for the record and ask that you respond to those appropriately. We appreciate your being here.

The Environment and Public Works Subcommittee Superfund, Waste Management, and Regulatory Oversight is meeting for the first time today to conduct a hearing on oversight of the management of the federal environmental protection, chemical safety and fish and wildlife agencies.

I would like to thank our witnesses, Inspector General Arthur Elkins of the U.S. Environmental Protection Agency and Deputy Inspector General Mary Kendall of the U.S. Department of the Interior, for taking time out of their schedules to be with us today.

I am honored to be chairing this subcommittee in the 114th Congress with my friend from Massachusetts, Senator Ed Markey, as Ranking Member. As subcommittee chairman, I plan to conduct full

oversight of the Environmental Protection Agency and the Department of the Interior.

The Inspectors General from these agencies can and should serve as a resource for these reviews and today's hearings serve as a starting point for this oversight plan. Inspectors General are tasked with independently conducting audits and investigations relating to agency actions and programmatic mismanagement.

Not only are they an asset to congressional oversight, but their recommendations are effective in correcting mismanagement, waste, fraud and abuse at the EPA and the Department of the Interior. It is essential that the Inspectors General view Congress as a partner in this oversight process.

Throughout this Congress, we will be focusing chiefly on good governance and making certain the agencies are operating transparently, responsibly managing taxpayer dollars and working to achieve their core missions without regulatory overreach so prevalent in agency actions today.

More than ever, we are seeing agency regulatory regimes expanding federal jurisdiction beyond their statutory limits, encroaching into private businesses, landowner's rights, and the States' ability to manage and regulate the environment and land within their own borders.

Additionally, the EPA and the Department of the Interior are

moving forward with implementing major environmental regulations impacting every sector of the U.S. economy and affecting hundreds of thousands of American jobs.

We must make certain that the regulations these agencies implement are being written in an open, transparent process that allows for full public participation taking into account all views regardless of the agencies' notions of their goals.

The EPA and Fish and Wildlife Service owe it to the American people to not only provide a thorough, transparent and honest analysis of how regulations will affect them but also to base these regulations on the most current and reliable economic data and sound science.

Notably, these IG's have conducted recent investigations on mismanagement at the Chemical Safety Board, grant management, and administrative management issues. I look forward to hearing a review of the work the IG's have done regarding management of the EPA, CSB, and Fish and Wildlife Service along with an update of the reviews the IG's are currently undertaking.

Again, I would like to thank our witnesses for being with us today and for presenting their testimony.

Now, I would like to recognize my friend, Senator Markey, for his opening statement as well.

[The prepared statement of Senator Rounds follows:]

STATEMENT OF THE HONORABLE ED MARKEY, A UNITED STATES SENATOR
FROM THE STATE OF MASSACHUSETTS

Senator Markey. Thank you very much.

I want to thank you, Chairman Rounds, for holding this first hearing of the subcommittee. I am looking forward very much to working with you in this Congress on these very important issues.

The offices of Inspector General are tremendously important to governmental integrity. These watchdogs must be independent, non-partisan and maintain the highest ethical standards to ensure the public's trust.

In addition to fighting fraud, waste and abuse of power, they ensure the government works the way Congress intended and the public deserves. For example, the Securities and Exchange Commission Inspector General uncovered the mishandling of whistleblowers' tips in the Madoff Ponzi scheme and the failure to take basic steps to stop it.

In response, Congress passed the Dodd-Frank Act to protect whistleblowers and provide incentives and mechanisms to report and promptly remedy misconduct.

Inspectors general also save billions of taxpayer dollars each year. For example, the Special Inspectors General for Afghanistan and Iraq reconstruction together recovered almost \$3 billion related to waste and fraud associated with the government's reconstruction work.

Your offices have also made notable contributions. For example, the former Department of Interior Inspector General identified a culture of ethical failure that occurred when the same office was responsible for oil and gas leases, revenue collection and enforcement of drilling safety and environmental regulations.

Following this report, the department implemented a more robust ethics program and announced a major departmental reorganization to eliminate those conflicts of interest.

The Environmental Protection Agency Inspector General has also done significant work in overseeing management and personnel challenges at both the Environmental Protection Agency and the Chemical Safety Board.

The Inspector General has also found that the Environmental Protection Agency needs to improve oversight of the States' implementation and enforcement. In a 2014 memo, the Inspector General raised concerns about States' implementation and enforcement of environmental programs assigned to protect the public from beaches contaminated by dangerous levels of bacteria and to ensure proper long term monitoring of Superfund sites so that they are safe for reuse.

For oversight by Inspectors General to garner public trust, transparency is key. Inspectors General have a responsibility to promptly report their activities, findings and recommendations to

Congress and the public. Yet, in 2014, the Department of Interior, Office of Inspector General, closed 533 investigations and released just 55 public reports.

Inspectors General also rely on the cooperation of the agencies they oversee. As Mr. Elkins' 2014 testimony indicated when an Inspector General is faced with obstruction and obfuscation by an agency, inefficiency thrives unchecked and potential wrongdoing evades both notice and consequences.

I agree with that. Agencies must cooperate to guarantee access to the information you need and to take corrective actions in response to your findings.

I look forward to your testimony about the important work you do and how Congress can help you to do better do your job.

I yield back the balance of my time.

[The prepared statement of Senator Markey follows:]

Senator Rounds. Thank you, Senator, for sharing your thoughts.

Now, we will turn to our first witness, Mr. Elkins from the EPA, for five minutes. Mr. Elkins, you may begin.

STATEMENT OF ARTHUR ELKINS, INSPECTOR GENERAL, U.S. ENVIRONMENTAL
PROTECTION AGENCY

Mr. Elkins. Good morning, Chairman Rounds, Ranking Member Markey and members of the subcommittee.

I am Arthur Elkins, Inspector General for EPA and CSB.

Thank you for inviting me to appear before you today. This morning I will touch on a few matters I believe will be of special interest. However, my written statement provides much greater detail on these and additional topics. I will begin with audit highlights.

Following OIG's criminal investigation of John Beale, an EPA senior policy advisor who defrauded the government of nearly \$900,000 while pretending to be an undercover agent for the CIA, OIG commenced a series of audits examining certain EPA processes.

Two of those audits on timekeeping and use of administrative leave are ongoing. We expect to issue our reports in mid-June and late summer respectively.

Simultaneously, OIG is conducting a program evaluation of how EPA and States are using their authorities to manage the potential impacts of hydraulic fracturing on water resources. This report too is on track for issuance in late summer.

On the investigative front, last month, Florida jury convicted two scientists, a married couple, of wire fraud, identity theft and obstruction. They had fraudulently obtained

about \$10.5 million in small research awards, including several contracts with EPA, by using stolen identities of real people to create false endorsements. The investigative team included the EPA OIG. Sentencing in that case has been set for May 28 of this year.

As an independent and objective office charged under the IG Act with oversight of management and program performance, it is critical that an OIG be able to carry out its work without obstruction.

Two impediment issues, one at EPA and one at CSB, have forced Congress to become actively involved during this past year. At EPA, a unit called the Office of Homeland Security has impeded OIG's authority to investigate threats against employees and facilities and certain misconduct allegations and computer intrusions.

After saying otherwise for months, OHAS now agrees that there is no category of activity at EPA to which OIG does not have unfettered access. FBI senior management confirms that FBI does not require EPA to withhold information from the OIG.

Still, EPA has not rescinded a memorandum of understanding with the FBI that has precluded such information sharing. Also, important is the fact that OIG has been unable to resolve the issue of OHAS having an assigned criminal investigator while lacking any investigative authority.

The second impediment to OIG relates to CSB. We requested documents following complaints alleging use of non-governmental email accounts to conduct official business which CSB officials refused to provide for more than a year.

Not until I sent a seven day letter and the House Committee on Oversight and Government Reform's Chairman and Ranking Member instructed Chairman Rafael Moure-Eraso to provide the documents did CSB substantially comply with the OIG's request.

OIG's investigation found evidence sufficient to support the conclusion that the CSB Chair and two of its senior officials had violated the Federal Records Act in implementing regulations by using non-governmental email systems to conduct official government business and not capturing those emails in the CSB records system.

Ultimately, President Obama requested that the Chair resign. Mr. Moure-Eraso stepped down from that role last month and ended his membership on the Board this past Friday.

Meanwhile, a former CSB Chief Information Officer has provided to the OIG a sworn statement alleging inconsistencies in the Chair's communication to me as well as during another HOCR hearing last month. My Office of Investigations has notified the U.S. Attorney's Office that the Chair may have committed perjury and certain other crimes.

These items represent a sampling of OIG's work and

challenges. We will continue to work with management at both EPA and CSB to help ensure that appropriated funds are properly managed and executed and accurate information is reported.

I would like to leave the subcommittee with a thought. An OIG's recommendations are only as good as an agency's implementation of them. At this time, many of this OIG's recommendations to the agencies for which I have oversight are unimplemented and way past due. Money left on the table, so to speak, does a tremendous disservice to the taxpayers.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions you or subcommittee members may have.

[The prepared statement of Mr. Elkins follows:]

Senator Rounds. Thank you, Mr. Elkins.

We will now hear from Ms. Kendall from the Department of the Interior. Ms. Kendall, you may begin.

STATEMENT OF MARY KENDALL, INSPECTOR GENERAL, U.S. DEPARTMENT OF
THE INTERIOR

Ms. Kendall. Thank you, Mr. Chairman and members of the subcommittee. Good morning. I am pleased to be here to testify about our oversight of the Fish and Wildlife Service.

As you know, my office conducts a wide range of oversight of fish and wildlife programs and operations. Two of Fish and Wildlife's grant programs, the Wildlife Restoration Program and the Sport Fish Restoration Program, were among DOI's four largest grant programs in fiscal year 2014, disbursing about \$1 billion.

For years, my office has provided consistent audit oversight to Fish and Wildlife for grants funded under these programs. When we took over this audit work, we created a small, dedicated unit to perform these audits, launched a systematic coverage cycle and established a uniform approach to all State audits.

Our audit findings range from internal control issues to Fish's monitoring of the States' expenditures. We have found that uniformity of our audits provides both Fish and the States with consistency of oversight that ensures that internal controls are in place to minimize financial risk in this popular grant program.

Like other DOI bureaus that have underground injection control wells, Fish and Wildlife could not fully identify and does not effectively manage the UIC wells on its lands. We found

several issues with Fish and Wildlife's shallow gravity drain wells, one of six categories defined in EPA's regulations that could potentially threaten underground drinking water.

We found that the department has no overarching guidance or policy to assist bureaus in complying with EPA's regulations concerning Class V injection wells. This has led to inconsistent management at the Bureau level.

We also found that Fish does not maintain a national database on sanitary leach fields or in fish hatcheries that could have agricultural wells, another type of Class V well.

Finally, Fish listed 54 banned types of floor drains in 29 different States but did not know if these were Class V wells. It has reportedly plugged them since we conducted our evaluation.

The Coastal Impact Assistance Program provides grant funds derived from federal offshore lease revenues to oil-producing States for conservation, protection, or restoration of coastal areas, wildlife, and natural resources.

The Secretary of the Interior was directed to disburse \$250 million in each of fiscal years 2007-2010 to eligible CIAP grant recipients. Responsibility for CIAP was transferred to Fish and Wildlife as of October 1, 2011.

At the request of Fish, we initiated an audit in 2011 focusing on grant funds awarded to Mississippi followed by an audit of funds awarded to Louisiana in 2013. Our audits revealed

deficiencies in both States' management of grant funds, as well a poor federal oversight of grant recipients and weak risk management.

In total, we questioned more than \$44.1 million in CIAP costs awarded only to Mississippi and Louisiana, representing ineligible grant charges, unreasonable costs and expenses not supported by documentation.

Our investigative oversight of Fish and Wildlife has focused primarily on administrative management issues in the recent past. In 2013, we issued a Management Advisory to the Secretary urging Fish and Wildlife leadership to act on long outstanding complaints of retaliation made by employees who raised scientific integrity concerns to us and to Fish and Wildlife management.

As of yesterday, two of the three cases were settled. The other case is still pending Fish and Wildlife action on settlement.

We also have ongoing administrative investigations into allegations of mismanagement and other wrongdoing on the part of Fish and Wildlife officials, including unfair and potentially illegal hiring practices, conflicts of interest, preferential treatment and wasteful spending.

Additionally, we have referred similar allegations from the same region to Fish and Wildlife management for review.

Finally, we are currently investigating allegations of Fish

and Wildlife Service employee misconduct related to conservation efforts and wildlife management.

Mr. Chairman, this concludes my prepared testimony today. I would ask that my full testimony be entered into the record. I would be happy to answer any questions you or members of the subcommittee may have.

[The prepared statement of Ms. Kendall follows:]

Senator Rounds. Thank you for your testimony, Ms. Kendall. Your full remarks will be entered into the record without objection.

Senators will now have six minutes each for questions. I will allow members to stay for a second round of questions but with the notice that we will do our best to have a hard stop of 20 minutes past the hour.

With that, I will begin. We will do these in six minute increments.

I would like to begin by following up a bit with Mr. Elkins in terms of the comments you made. I wanted to ask you about the transparency of the agencies based on your experiences.

In recent reports, there have been concerns that your respective agencies do not give you full and open access to information that you need to conduct a thorough investigation of certain programmatic issues or agency actions.

Inspector General Elkins, I believe this is an issue your office faced when conducting your investigation of the Chemical Safety Board, as you mentioned, and when looking into how the EPA's Office of Homeland Security impedes your own investigations.

Can you explain in a little more detail some of the issues you faced in gaining full access to the information your office needs or having information withheld from you when you are

conducting investigations of your respective agencies, not only what it does to impede your ability to actually investigate, but if you could, I would like your thoughts about what we could do to assist you in getting that information you need?

Mr. Elkins. I would be very happy to respond to your question.

Generally speaking, on the transparent access issue, my sense is that both the EPA and the CSB fail to truly embrace the underlying authorities and the concepts in the IG Act and understand exactly what it means.

We spent a lot of time trying to do outreach and educate the agencies on the IG Act and the fact of what independent stands for and the fact that we are there to help but we are also independent.

The challenge I have run into is that in certain areas, the agencies tend to embrace that concept but when it works in a way that it may embarrass them, they tend not to embrace that concept and that is where we start to get some push back.

Having these sorts of hearings is very important. Having statements come from this panel as well as members on the House side in support of the work that we do is extremely important.

Under the IG Act, we basically have a dual reporting responsibility. One is to the agency head and the other is to this body. To the extent that we don't get cooperation on the

agency side, the only avenue we have available to us is you. The fact that you are doing what you are doing is very helpful and I really appreciate it.

Senator Rounds. Thank you.

Ms. Kendall, last summer, 47 of your colleagues from the IG community sent a letter to Congress raising serious concerns about how agencies had either not cooperated with investigations or how the IGs had limited access to records or witnesses. Mr. Elkins signed this letter and cited problems in working with the EPA as an example.

You chose not to sign the letter. Can you tell us why you chose not to sign this letter? Does your unwillingness to sign the letter indicate that you did not agree with the concerns that were raised? Can you share a little with us about your thought process in terms of why you did not?

Ms. Kendall. I would be happy to, Mr. Chairman.

I chose not to sign that letter for several reasons. One, I am a part of the Executive Council for the CIGIE. That body sent a formal letter to the Department of Justice with its formal position on the access issue. I felt as a signatory by virtue of being on the Executive Council that was my position by virtue of CIGIE. It did not, in any way, mean that I disagreed with the letter signed by the 47.

The other reason I chose not to sign that separate letter

was I did not want to give an indication to my agency, where I have had absolutely no problem whatsoever with access to information, to suggest that I felt there was a problem.

We have not had the access problems that Mr. Elkins and some of the other IGs have had. I did not want to indicate to my agency I had that feeling.

Senator Rounds. I just want to follow up and be clear. As I understand it, you have not had a problem gaining access to records, you have not had any grant interviews refused to its staff and there has been no sense of impediments to your investigations within your agency?

Ms. Kendall. None, that I am aware of, sir.

Senator Rounds. Thank you very much.

With that, Senator Markey.

Senator Markey. Thank you, Mr. Chairman.

Mr. Elkins, across the Country, thousands of miles of old, leaking natural gas distribution pipelines that run under our streets are costing consumers money, threatening public health and safety with potentially dangerous explosions and contributing to global warming by releasing natural gas into the atmosphere.

An Office of Inspector General July 2014 report found that EPA was not regulating methane emissions from natural gas distribution pipelines, had not partnered with the Pipeline and Hazardous Materials Safety Administration, and that its voluntary

program to address methane leaks has achieved limited success.

Moreover, your report found that consumers were losing nearly \$200 million each year from this leaking natural gas.

I have introduced legislation in the Senate that would address some of the financial and policy barriers that are an impediment to repairing and replacing our aging, leaking natural gas pipeline infrastructure.

While I know you have not read the legislation, would efforts to remove these barriers and disincentives that may be in place to reduce methane emissions from leaking natural gas pipelines such as cost recovery and up front capital investments help address that problem?

Mr. Elkins. Yes, sir. I think that would be a good thing.

Senator Markey. Mr. Elkins, the EPA agreed with your recommendation that it should work with HMTA to address methane leaks from a safety and environmental standpoint. EPA agreed to implement this recommendation by December 31, 2014. Has that recommendation been implemented, in your opinion?

Mr. Elkins. According to our books, it shows that the recommendations have been implemented but until we are able to go out and do follow up work, I cannot tell you specifically that has occurred.

Senator Markey. Is it your intention to follow up and find out whether or not that work has been done?

Mr. Elkins. Yes, sir. We will be following up.

Senator Markey. That would be very helpful.

Ms. Kendall, coal on federal lands belonging to the American people generates billions of dollars in revenue from the Federal Government each year. However, three decades after the GAO, at my request, discovered improprieties in coal lease sales in the Powder River Basin in Wyoming and Montana, recent evaluations of the Federal Coal Program have found that many of the same problems persist today.

Recently, the Inspector General and the GAO, again at my request, issued reports showing that taxpayers may be losing millions of dollars on this coal that belongs to them. In fact, based on my staff's review, I believe using appropriate market calculations and assumptions in recent coal lease sales could potentially have yielded \$200 million additional or more for the American people.

Ms. Kendall, of the 13 recommendations made in the IG report on the Federal Coal Program, the Bureau of Land Management agreed with the majority of them, although none had been implemented at the time the report was issued.

Since this report was issued in 2013, BLM has taken some steps to address the deficiencies identified in the Coal Program. Of the 13 recommendations made in the IG report, how many are still left to be implemented?

Ms. Kendall. Senator Markey, my understanding is that recommendations 2, 3, 6, 9 and 12 remain open and remain unimplemented, but I have a document I would be happy to provide you and your staff that outlines the specifics of the status of those recommendations which we would be happy to provide.

Senator Markey. So five of the 13 recommendations have yet to be implemented?

Ms. Kendall. That is correct, sir.

Senator Markey. The IG and GAO reports both found that BLM does not fully account for the potential that coal produced from federal lands will be exported to foreign countries where it can be sold at a higher price.

Coal exports from the Powder River Basin and other federal lands are expected to increase substantially in the coming years. Do you believe that BLM is doing enough to evaluate the possibility of exports in determining the value of federal coal?

Ms. Kendall. Like Mr. Elkins, I do not believe we have gone in to do a verification of what they are actually doing, but by virtue of what they have reported to us in terms of implementing the recommendations, it appears they are doing what we asked as a result of our evaluation.

Senator Markey. You are saying they are now factoring in?

Ms. Kendall. No, I believe that they are; we have not verified it, though.

Senator Markey. Okay. I think that is very important. Ultimately, it is public property that is being sold to the private sector. If they are getting a higher price overseas for the coal that should be factored into what we sell it to the private sector for so that we are putting more money into the federal treasury for a publicly owned good.

Number two has yet to be implemented. I think it is important for us to be able to get to the bottom of that story as well.

I thank you, Mr. Chairman. I yield back the balance of my time.

Senator Rounds. Thank you, Senator Markey.

Senator Inhofe?

Senator Inhofe. Thank you, Mr. Chairman.

Let me start with Mr. Elkins. More than a decade ago, the last time the Republicans were a majority, I chaired this committee and we raised concerns over the EPA's grants management. It seems a lot still needs to be done. Just last month, I think it was, two scientists were convicted of stealing about \$10 million in research grants.

Is your office investigating any of these right now? You do not need to elaborate, just yes or no.

Mr. Elkins. Senator, right off the top of my head, I cannot think of an active case right now.

Senator Inhofe. We will give you the information and would like to work with you in that respect. We know you would find that to be of interest.

In February, your office launched an evaluation of EPA and the States' ability to manage the potential threats to water resources and hydraulic fracturing. Hydraulic fracturing is something I can talk about.

The first hydraulic fracturing took place in my State of Oklahoma in 1948. I remember when Lisa Jackson was the first Administrator to the EPA chosen by President Obama. I asked her have you ever had any documented cases of groundwater contamination as a result of hydraulic fracturing. She gave the answer that she had not.

I am wondering though if you are going to be getting into this thing and making evaluations as to what they are attempting to do, it seems to me -- I have been one of the top critics of the EPA -- that when they get involved in these things, we find out nothing ever happens.

Do you remember the case of Armendariz and Range Resources in Texas? That got a lot of publicity. It was our staff that uncovered the conversation that he had with his subordinates saying, what you've got to do with the oil and gas industry is what the Romans did to the Turks -- when they would go into a new town, they would crucify the first four Turks they saw and then

they had their attention.

As a result, that exposure took place and he is no longer there. He has a better job with one of the environmental groups. I do not know which one it is but he is doing all right. Don't feel bad about him.

Also, Pavillion, Wyoming was something where they came up with this criticism -- remember the person lost their home. They decided to take it to court and they won and the EPA was wrong. The same thing happened in Pennsylvania.

I would say that I am hoping that you will be looking at these in terms of the performance, the history of what their successes and failures have been. Would you be willing to do that? Working with our office, we have an abundance of information to help you.

Mr. Elkins. Senator, we would be more than happy to work with your office.

Senator Inhofe. I would say a similar thing to you, Ms. Kendall. We are involved in two things right now that I think would be of interest to you. One has to do with the Endangered Species Act -- both do, actually.

These closed door litigation settlement agreements with environmental groups that require the Service to decide whether to list species under the Endangered Species Act, I don't care whether it is the burying beetle or the lesser prairie chicken or

what it is, once they either list something as threatened or endangered, they never get off the list. There are reasons they should get off the list.

Would you agree to work with my staff, Ms. Kendall, specifically in reviewing the process that led to the settlements and how they are being implemented? I am talking about cooperative settlements with groups where they file the lawsuits and you know what the settlement is all about. Would you be willing to look into that and work with our office to try to resolve what I consider to be a serious problem?

Ms. Kendall. It is an issue of which I am generally aware, Senator Inhofe. We would be happy to work with your staff to learn more about it and look into what this involves.

Senator Inhofe. I appreciate that. I mentioned that once something gets listed, they never get off. As an example, the Service listed the American burrowing beetle as endangered in 1989. Twenty-five years later, the Service still has not established criteria for delisting the beetle.

This is something that we need to work together on. Our staff is going to be involved in doing this. Several things we thought should have been done some ten years ago when we first got involved in this.

This particular beetle and the endangered status it enjoys is one that has a lot to do with people out there farming, trying

to plow their fields, people are building roads and drilling for energy, so it is something that certainly has a great effect in my State of Oklahoma.

If you would join us in that, we would appreciate it very much. Would you do that?

Ms. Kendall. We would be happy to work with you to better understand this issue.

Senator Inhofe. Thank you very much.

Thank you, Mr. Chairman.

Senator Rounds. Thank you.

Senator Crapo?

Senator Crapo. Thank you, Mr. Chairman.

I don't have any questions for these witnesses, although I do want to indicate that I agree with the concerns that have been raised by my colleagues here today. I look forward to learning more about the responses we will see from both the EPA and the Department of the Interior on these issues.

I yield back my time, given that we have a hard stop, for you to utilize in your questioning.

Senator Inhofe. It might be a good idea, Mr. Chairman -- maybe you did this before I came in -- to remind him why we have to cut this short, because we do have a well publicized hearing with Secretary Kerry.

Senator Rounds. What I would like to do is if there are

additional questions, we will try to do them in three minute increments. When we are done with that second round and if we have time, we will take it. If not, we will close it down.

I just have a question. I would like to follow up a little bit with Ms. Kendall.

To follow up on Senator Inhofe's questions, with regard to your work being done on the Endangered Species Act, with the record number of species that have been listed as a result of the environmental litigation settlements as the Senator indicated, it would appear -- perhaps it is not correct and I would like your thoughts on it -- your office has done very little oversight on the settlements themselves or specifically the Endangered Species Act and the implementation.

Has it not been requested, or does your office not see the ESA oversight as a priority compared to other areas? Can you talk with us a bit about whether or not there has been a review of the settlements done internally that have placed some of these specific species under the Act or being identified as being endangered?

Ms. Kendall. Certainly, sir. We have not been advised externally from Congress, from the public or internally through whistleblowers that there are specific problems about specific listings. If we had been so advised, we would certainly take a look at them.

What I hear Senator Inhofe saying is that he has concerns about some very specific species. We would be glad to get with staff to understand what those concerns are and take a look at them as appropriate.

Senator Rounds. I would like to expand that just a little in terms of the process you utilize or the existing practice of how they are identified, how the determination is made to actually list them, and what the criteria is that is out there.

I was wondering also if you would work through that process with our committee, go back through it and see how exactly that process is being implemented today.

Ms. Kendall. Certainly. One of the things we do and have done in the 15, coming on 16, years that I have been with the IG's Office is look at process such as the Endangered Species Act listing or delisting process and ensure that the process, as it is being both practiced and in place, is being appropriately executed.

Senator Rounds. When was the last time that was completed?

Ms. Kendall. Usually, we do it in the context of a specific concern, so it has been a number of years, sir.

Senator Rounds. Thank you.

Senator Markey.

Senator Markey. Thank you, Mr. Chairman.

Ms. Kendall, in 2014, your office completed a report that

examined Department of the Interior management of the disposal wells containing chemicals like benzene and pathogens from untreated sanitary waste on DOI-managed public lands.

The report found that the department's failure to understand its responsibilities under federal law may have endangered public health and drinking water supplies by allowing these sorts of wells to continue in operation for nearly ten years after they were banned by the EPA.

Has DOI implemented your recommendations to consistently identify, inspect and manage these disposal wells and ensure compliance with federal regulations on public lands?

Ms. Kendall. Sir, I do not have the specifics on the Underground Injection Control Report recommendations and what has been implemented. I would be glad to get those to you and your staff in regard to what they have implemented and what has not been implemented so far.

I do know that generally, the department agreed that it would work with EPA to ensure that they were in compliance with EPA regulations relative to Class V underground injection control wells.

Senator Markey. While the IG report only looked at one type of well, do you think it is possible that other types of wells such as those designed for disposal of hazardous waste and byproducts from oil and gas production might be similarly

mismanaged by the Department of the Interior?

Ms. Kendall. That was a concern of ours, sir. However, we took a look at a very high level and did not see the same kind of concern that we had with the Class V wells. At this point, we chose not to pursue that evaluation further.

Senator Markey. Could you take another look at it to determine whether or not that was the correct decision? Again, I would respect your judgment in that case. Taking another look at it would be extremely helpful.

Ms. Kendall. Certainly we can do that.

Senator Markey. Thank you, Mr. Chairman.

Senator Rounds. Thank you, Senator Markey.

Senator Inhofe.

Senator Inhofe. Really quickly, Mr. Chairman, to Mr. Elkins.

We had a chemical hearing in this committee I think on March 18. We are going to have another coming up next week, I think.

The recent report by your office includes 23 recommendations to improve the Chemical Safety Board. Now that we have that change taking place, what are the unresolved challenges that a new Chemical Safety Board leadership would have to address now that the chairman has resigned? Do you have any comments about that? This is going to take place this coming week.

Mr. Elkins. There are a number of governance issues.

Reinstating a board order that was rescinded would be a good first step. Gaining respect, the morale at that agency is very low. Treating the employees with respect is a big issue.

I could go on. There are a number of other issues I would be glad to share with you but off the top of my head, those would be some of the key issues.

Senator Inhofe. That is significant. I remember that same issue was a problem with the Nuclear Regulatory Commission. To regain the respect and the working relationship, I think, is very important. I would appreciate that.

Thank you.

Senator Rounds. Right now, I am showing we have about six minutes left and we are going to have to shut down.

Ms. Kendall, you indicated earlier that you had approximately 533 investigations that have been completed or thereabouts. I understand Senator Markey indicated perhaps 55 of them had been made public. My information says even less than that have been made public.

I am just curious. There obviously has to be a reason why so many of them have not been made public. Can you clarify a bit why those have not been made public and what processes are in place to determine which are made public? I think it would be fair for you to be able to respond to that.

Ms. Kendall. There are a couple things that need to be

clarified. First, I think the 533 -- I don't have the specific numbers but will rely on Senator Markey's numbers -- were probably complaints that were received by our criminal investigative group. That does not mean that all of those would become criminal cases or even administrative cases.

We have had a process in place to release investigative cases based on the FOIA rules which say if you have three requests, they should become public. We have since changed that process. We will be deferring, quite frankly, to a release status as opposed to a non-release status by virtue of summary of our investigative cases.

We have just started getting that underway. In deference to and recognition of Senator Markey's observation, we think it is important to release more of the investigative information. We did not keep it from anyone for any particular reason other than we were following the FOIA rules which suggest that after three requests, they become public.

Senator Rounds. If you have made a change in your policy and if it is a written policy -- I am assuming it is -- would you share that with our committee as well, please?

Ms. Kendall. I am not sure that we have reduced it to writing but we would be glad to share in theory what our new policy is and it is being developed.

Senator Rounds. I think it is important enough where if you

are following it, that it be something we should have a look at as well.

Ms. Kendall. Whatever we have, sir, we will get to you.

Senator Rounds. Thank you very much.

Senator Markey, do you have any final comments, thoughts or questions?

Senator Markey. Ms. Kendall, I just want to clarify with respect to your office's recommendation to improve the Federal Coal Program. You stated one of the five recommendations that have not yet been implemented is recommendation number two. Recommendation number two states that the BLM should take action to fully account for the export potential in developing coal, the fair market value.

It appears that BLM has not yet fully implemented the possibility of exports in determining the fair market value of federal coal leases as your office recommended.

Can you check on the status of the five recommendations for the Federal Coal Program and report back to the committee?

Ms. Kendall. We will do that actually with all the recommendations.

Senator Markey. Thank you.

Senator Rounds. Thank you, Senator.

Once again, I would like to thank the Inspectors General for the work they do overseeing the management of our agencies. I

would also like to thank my colleagues who attended this hearing for their thoughts and questions.

The record will be open for two weeks which brings us to Tuesday, April 28.

Thank you for coming and sharing. We look forward to working with you.

With that, this hearing is adjourned.

[Whereupon, at 10:15 a.m., the subcommittee was adjourned.]